APPENDIX

United States Statutes at Large 5, 25th Congress, Sess. III., Chap. XXXVI, Statute III, Feb. 28, 1839

An Act in amendment of the acts respecting the Judicial System of the U. S.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where, in any suit at law or in equity, commenced in any court of the United States, there shall be several defendants, any one or more of whom shall not be inhabitants of or found within the district where the suit is brought or shall not voluntarily appear thereto, it shall be lawful for the court to entertain jurisdiction, and proceed to the trial and adjudication of such suit, between the parties who may be properly before it; but the judgment or decree rendered therein shall not conclude or prejudice other parties, not regularly served with process, or not voluntarily appearing to answer; and the nonjoinder of parties who are not so inhabitants, or found within the district, shall constitute no matter of abatement, or other objection to said suit.

Sec. 2. And be it further enacted. That all the circuit courts of the United States shall have the appointment of their own clerks; and in case of a disagreement between the judges the appointment shall be made by the presiding judge of the court.

Sec. 3. And be it further enacted. That all pecuniary penalties and forfeitures accruing under the laws of the United States may be sued for and recovered in any court of competent jurisdiction in the State or district where such penalties or forfeitures have accrued, or in which the offender or offenders may be found.

Sec. 4. And be it further enacted, That no suit or

prosecution shall be maintained, for any penalty or forfeiture, pecuniary or otherwise, accruing under the laws of the United States, unless the same suit or prosecution shall be commenced within five years from the time when the penalty or forfeiture accrued; Provided, the person of the offender or the property liable for such penalty or forfeiture shall, within the same period, be found within the United States; so that the proper process may be instituted and served against such person or property therefor.

Sec. 5. And be it further enacted, That the punishment of whipping and the punishment of standing in the pillory, so far as they now are provided for by the laws of the United States, be, and the same are hereby abolished.

Sec. 6. And be it further enacted, That, in all cases of recognizances in criminal causes taken for, or in, or returnable to, the courts of the United States, which shall be forfeited by a breach of the condition thereof, the said court for or in which the same shall be so taken, or to which the same shall be returnable, shall have authority in their discretion to remit the whole or a part of the penalty, whenever it shall appear to the court that there has been no wilful default of the parties, and that a trial can notwithstanding be had in the cause, and that public justice does not otherwise require the same penalty to be exacted or enforced.

Sec. 7. And be it further enacted, That the second section of the act of congress, passed the twenty-ninth day of April, one thousand eight hundred and two, which makes it the duty of the associate justice of the Supreme Court, resident in the fourth circuit, to attend in the city of Washington, on the first Monday of August annually, to make orders respecting the

business of the Supreme Court, be, and the same, is hereby, repealed.

Sec. 8. And be it further enacted. That in all suits and actions in any circuit court of the United States in which it shall appear that both the judges thereof or the judge thereof, who is solely competent by law to try the same, shall be any ways concerned in interest therein, or shall have been of counsel for either party, or is, or are so related to or connected with either party as to render it improper for him or them, in his or their opinion, to sit in the trial of such suit or action, it shall be the duty of such judge or judges, on application of either party to cause the fact to be entered on the records of the court; and also to make an order that an authenticated copy thereof, with all the proceedings in such suit or action, shall be forthwith certified to the most convenient circuit court in the next adjacent State, or in the next adjacent circuit; which circuit court shall, upon such record and order being filed with the clerk thereof, take cognizance thereof in the same manner as if such suit or action had been rightfully and originally commenced therein, and shall proceed to hear and determine the same accordingly, and the proper process for the due execution of the judgment or decree rendered therein, shall run into and may be executed in the district where such judgment or decree was rendered, and also, into the district from which such suit or action was removed.

APPROVED, February 28, 1839.